

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

JOSEPH COOPER BURTON,	:	
	:	C.A. No: 10A-11-001 (RBY)
_____ Appellant,	:	
	:	
v.	:	
	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee.	:	

Submitted: May 20, 2011

Decided: August 4, 2011

*Upon Consideration of Appeal
of the Unemployment Appeal Board's Decision*

AFFIRMED

OPINION AND ORDER

Joseph Cooper Burton, *pro se*, Appellant.

Katisha D. Fortune, Esq., Department of Justice, Wilmington, Delaware for Appellee.

Young, J.

SUMMARY

Appellant Joseph Cooper Burton (“Burton”) appeals the Unemployment Insurance Appeal Board’s (“UIAB or the Board”) denial of his unemployment benefits. Because the Board properly found that Burton had not pursued his appeal in a timely fashion, the Board’s decision is **AFFIRMED**.

FACTS

This matter arises out of a determination by the Claims Deputy, that Burton is disqualified from the receipt of benefits due to fraud. It was determined that overpayments of benefits to Burton, in the combined amount of \$2,007.00, for nine weeks from March 27, 2010 to May 22, 2010, occurred. Burton failed to report this overpayment. The Claims Deputy’s determination was dated and mailed on June 30, 2010, to Burton, at his address on record, by first-class mail. It was not returned as “undeliverable.” Pursuant to 19 *Del. C.* §3220, Appellant is given 10 days to file an Appeal of the determination. Even assuming some time for mail delivery and weekends, the last day to file an appeal to the determination would have been mid-July. On August 16, 2010, Burton attempted to appeal the Claims Deputy’s determination.

On September 7, 2010, a hearing before an Appeals Referee, solely on the issue of the timeliness of Burton’s appeal, was held. Burton and an agency representative appeared and presented evidence. Burton testified that he read on a fifth grade level, going on to say that when he received the information from the Department of Labor, he tried to decipher the information the best he could. He testified that he was told to keep calling if he did not work forty hours a week.

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The Referee affirmed the determination that Burton failed to file a timely appeal to the initial eligibility determination. This decision was dated and mailed on September 10, 2010. Burton then appealed that determination to the Board. The Board considered Burton's appeal for further review on October 6, 2010. The Board affirmed the Appeals Referee, finding that there was neither error on the part of the Department nor any extraordinary circumstance present to excuse the delay in filing the appeal.

STANDARD OF REVIEW

The scope of review of findings of the Unemployment Insurance Appeal Board is limited to a determination of whether there was substantial evidence sufficient to support the Board's findings.¹ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² On appeal, the court does not weigh evidence, determine questions of credibility, or make its own factual findings.³ If there is substantial evidence and no mistake of law, the Board's decision must be affirmed.⁴

DISCUSSION

This Court has jurisdiction to determine whether or not the Board abused its

¹ *Unemployment Ins. Appeal Bd. of Dep't of Labor v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975).

² *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. June 6, 2003).

³ *Id.*

⁴ *City of Newark v. Unemployment Ins. Appeal Bd.*, 802 A.2d 318, 323 (Del. Super. 2002).

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discretion by deciding not to hear the grievant's appeal.⁵ Under Delaware law, a decision of the Appeals Referee affirming, modifying or reversing a decision of the claims deputy becomes final "unless within 10 days after the date of notification of mailing of such decision further appeal is initiated pursuant to §3220 of this title."⁶ The Board may hear an untimely appeal, in its discretion, "if there had been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interest of justice would not be served by inaction."⁷ However, a late appeal, "may only be excused in extraordinary circumstances."⁸

CONCLUSION

The appellant has failed to file a timely appeal, or present evidence, which would excuse its lateness. Therefore, the Board's decision must be affirmed. The undisputed facts are that the decision of both the Claims Deputy and the Appeals Referee were mailed to the appellant's last address of record. Neither was returned as "undeliverable." The decisions gave notice and an opportunity to be heard in satisfaction of due process requirements. As such, the appeal was untimely. There is no evidence of administrative error or extraordinary circumstances. Therefore, the

⁵ *Finocchiaro v. Panco Mgmt.*, 2006 WL 278402, at *4 (Del. Super. 2006).

⁶ 19 *Del. C.* § 3318(c); 19 *Del. C.* §3220.

⁷ 19 *Del. C.* § 3318(c).

⁸ *Bailey v. MBNA Am. Bank*, 1991 WL 1304159, at *2 (Del. Super. 1991).

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Board's decision is supported by the record, and is final.

For the foregoing reasons, the Board's decision is **AFFIRMED**.

SO ORDERED this 4th day of August, 2011.

/s/ Robert B. Young

J.

RBY/sal

oc: Prothonotary

cc: Opinion Distribution
File